

Exhibit 11

1
2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 SAN FRANCISCO DIVISION

5 - - - - -x
6 SURGICAL INSTRUMENT SERVICE COMPANY, INC.,
7 Plaintiff,
8 -against-
9 INTUITIVE SURGICAL, INC.,
10 Defendant.

11 - - - - -x
12 Virtual Zoom Deposition
13 March 8, 2023
14 9:00 a.m. CST

15
16 VIRTUAL VIDEO DEPOSITION of RICHARD BERO,
17 in the above-entitled action, held at the
18 above time and place, taken before Jeremy
19 Richman, a Shorthand Reporter and Notary
20 Public of the State of New York, pursuant to
21 the Federal Rules of Civil Procedure, and
22 stipulations between Counsel.

23
24 * * *
25

1 R. BERO

2 have happened but for the allegations; 11:34:02

3 is that fair? 11:34:03

4 A. Yes, yeah, I can't remember 11:34:05

5 if I used the "but-for" in my report or 11:34:07

6 not, but yeah. I'm very familiar with 11:34:09

7 that, yeah, I understand what you're 11:34:14

8 saying. 11:34:15

9 Q. Okay, great. So to return to 11:34:15

10 the question, are you making any 11:34:17

11 assumptions about what Rebotix's sales 11:34:19

12 would have been in the but-for world? 11:34:22

13 A. Well, I guess, inherently, 11:34:30

14 I'm assuming that Rebotix would have 11:34:43

15 achieved certain levels of sales 11:34:46

16 dependent upon, you know, which model, 11:34:51

17 if you will, they would have sold to 11:34:58

18 SIS. And, you know, as I talk about, I 11:35:02

19 have the two different models, the 11:35:10

20 in-house model and then the distributor 11:35:12

21 model. And the in-house model would be 11:35:13

22 Rebotix selling chips directly to SIS. 11:35:16

23 A distributor model would be Rebotix 11:35:24

24 providing the services, as well as the 11:35:30

25 chip, the repair service as well as the 11:35:34

1 R. BERO

2 chip, to SIS and its customers. 11:35:35

3 So that's, I guess, 11:35:40

4 inherently assuming Rebotix would have 11:35:42

5 made those sales. Unless, to the other 11:35:45

6 extent, Restore was in a position where 11:35:49

7 it was the one that was supplying the 11:35:51

8 chips, whether or not it was the X/Xi 11:35:55

9 or whether it was also the S, Si chip. 11:35:58

10 Q. So are you assuming that in 11:36:06

11 the but-for world, that Rebotix would 11:36:10

12 only sell to SIS, either through an 11:36:13

13 in-house model or through a distributor 11:36:16

14 model? 11:36:18

15 A. I'm not assuming that they 11:36:18

16 only would have sold to SIS. But 11:36:20

17 certainly, SIS would have been, likely, 11:36:26

18 the majority of their sales for these 11:36:31

19 kinds of, certain products or services. 11:36:35

20 Essentially, the interceptor chip. 11:36:41

21 Q. And you haven't, for example, 11:36:43

22 forecasted what the sales of Rebotix 11:36:48

23 might be in the but-for world, correct? 11:36:52

24 A. I haven't forecasted what 11:36:56

25 Rebotix's sales would have been in the, 11:37:00

1 R. BERO

2 no, other than to the extent, again -- 11:37:05

3 do you mean separate from SIS? 11:37:08

4 Q. Yes. 11:37:10

5 A. No, I haven't specifically 11:37:11

6 done that. Although my understanding 11:37:14

7 is that Rebotix would have been making 11:37:17

8 the majority of their sales through 11:37:21

9 SIS, simply because of their -- well, I 11:37:24

10 mean, based on my understanding of the 11:37:30

11 relationship and how they were, both 11:37:33

12 parties, were approaching that 11:37:37

13 relationship. 11:37:38

14 Q. Are you making any 11:37:38

15 assumptions about what Restore's sales 11:37:43

16 would have been in the but-for world? 11:37:46

17 A. It would be similar to 11:37:47

18 Rebotix. So depending on who, whether 11:37:57

19 it was Restore or Rebotix, had the 11:38:05

20 capability for the X and Xi chip, and, 11:38:07

21 you know, also depending upon whether 11:38:13

22 or not the added RFID encryption on the 11:38:17

23 X and Xi EndoWrists was legal or not, 11:38:24

24 that would, perhaps, factor into who 11:38:31

25 was actually, you know, whether it was 11:38:34

1 R. BERO

2 Restore, Rebotix or a combination of 11:38:37
3 both, making the sales. So I haven't 11:38:40
4 specifically tried to parse that out. 11:38:42
5 We don't know. 11:38:47

6 Q. You're not assuming, though, 11:38:52
7 that Restore only would have sold, you 11:38:54
8 know, for example, chips to SIS in the 11:38:58
9 but-for world, correct? And had no 11:39:01
10 other sales? 11:39:07

11 A. I'm not assuming Restore 11:39:09
12 would have sold just to SIS and had no 11:39:12
13 other sales. No, I'm not assuming 11:39:16
14 that. I mean, perhaps they would have, 11:39:20
15 but I'm not assuming that necessarily, 11:39:24
16 no. 11:39:27

17 MR. VAN HOVEN: Ashley, 11:39:32
18 whenever we get to an appropriate 11:39:33
19 time, it would be a good time to 11:39:37
20 take a break. 11:39:39

21 MS. BASS: We can take one 11:39:39
22 now, that's good. 11:39:42

23 MR. VAN HOVEN: Okay. 11:39:43

24 THE VIDEOGRAPHER: Time is 11:39:44
25 11:39 a.m. Central time on March 8, 11:39:45

1 R. BERO

2 Q. And did you undertake any 13:58:00
3 analyses to compare the proposed 13:58:02
4 Intuitive EndoWrists refurbishment 13:58:04
5 pilot program to the process that SIS 13:58:09
6 undertakes on EndoWrists? 13:58:11

7 A. I did not -- I'm not sure 13:58:20
8 that would be possible. Other than -- 13:58:24
9 no, I obviously saw the reference to 13:58:40
10 the documents and the testimony and so 13:58:41
11 forth, but I didn't do an independent 13:58:43
12 comparison. 13:58:47

13 Q. And would you agree that -- 13:58:51

14 A. I'm not sure that would be 13:58:52
15 possible. 13:58:53

16 Q. Sorry, I didn't mean to talk 13:58:54
17 over you, can you -- are you done on 13:58:56
18 that one? 13:58:59

19 A. Yeah, I just said I don't 13:59:00
20 know that that would be possible, and 13:59:02
21 quite frankly, I wouldn't be the person 13:59:03
22 to do that. If it were possible. 13:59:05

23 Q. And you note here that the 13:59:10
24 SIS data that you mentioned, that data 13:59:16
25 was limited, correct? 13:59:18